

FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

2009 APR 28 PM 12:08

IN RE: PETITION OF

KNOX COUNTY PUBLIC DEFENDER)

HOWARD G. HOGAN

Docket No. 174552-L

**SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION
AND MOTION TO DISMISS THE PETITION OR SET A BRIEFING SCHEDULE ON
THE ISSUE OF SUBJECT MATTER JURISDICTION**

The Attorney General, on behalf of the Administrative Office of the Courts, files this suggestion of lack of jurisdiction and motion to set a briefing schedule on the issue of this Court's jurisdiction to entertain the Public Defender's petition for a writ of certiorari. An appeal from the decision of a general sessions court is ordinarily taken to the appropriate circuit court. Tenn. Code Ann. § 27-5-108. However, the Public Defender seeks review in this Chancery Court of an order entered by the Knox County General Sessions Court Judges on February 20, 2009, denying the Public Defender's petitions in General Sessions Courts to suspend the Public Defender from appearing before the General Sessions Courts. The General Sessions Court Judges based their dismissal on their finding that the Public Defender had failed to prove his claim by the requisite quantum of evidence. In the Public Defender's petition for certiorari to this Court, his sole articulated issue for review is whether he did in fact prove up his claim. In other words, the Public Defender advances a "sufficiency of the evidence" argument.

The Public Defender's petition for certiorari points to no authority for this Chancery Court to assume jurisdiction over the petition. Moreover, case law indicates that there is no such authority, for at least two reasons. First, certiorari is not appropriate when the Legislature has prescribed another avenue for review or appeal. *State v. Harwell*, 124 S.W.3d 629, 631-32

(Tenn. Crim. App. 2003) (noting that the Legislature had provided in Tenn. Code Ann. § 27-5-108 that appeals from general sessions court decisions should be taken within ten days under the statute rather than by means of a writ of certiorari). Here, appeal was available to the Public Defender under Tenn. Code Ann. § 27-5-108 and he should not be permitted to evade compliance with the statute.

Second, the writ of certiorari is an extraordinary judicial remedy; it may not be used to inquire into the intrinsic correctness of a lower tribunal's decision, to reweigh the evidence, or to substitute the reviewing court's judgment for that of the lower tribunal. *Robinson v. Clement*, 65 S.W.3d 632, 635 (Tenn. Ct. App. 2001). Instead, certiorari is available to review extraordinary circumstances such as fraud, contrivance, or acts by a court clerk that frustrate a party's attempt to procure an appeal. *Harwell*, 124 S.W.3d at 631. Here, the petition for writ of certiorari makes no allegations of such extraordinary circumstances. Instead, it improperly asks this Court to reweigh the evidence and substitute its judgment for that of the General Sessions Judges.

In the absence of any articulated or apparent subject matter jurisdiction for this Court to entertain the petition for certiorari, the petition should be dismissed. In the alternative, the Attorney General respectfully requests this Court to set a briefing schedule on the issue.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter



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CERTIFICATE OF SERVICE


I certify that a copy of the foregoing suggestion of lack of subject matter jurisdiction and motion to dismiss the certiorari petition or set a briefing schedule on the jurisdictional issue was forwarded by first class U.S. Mail, postage paid, to:

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Mark E. Stephens
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on this 22th day of April 2009.



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